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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY DUANE MONIA,

Defendant and Appellant.

E070885

(Super.Ct.No. RIF1506618)

OPINION

APPEAL from the Superior Court of Riverside County. Charles J. Koosed, Judge.
Affirmed.

Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Anthony Duane Monia entered his ex-girlfriend's residence and vandalized property within the home. Following a jury trial, defendant was convicted of felony vandalism (Pen. Code, § 594, subd. (b)(1)).¹ The jury was unable to reach a verdict on the burglary (§ 459) charge, and the trial court declared a mistrial as to that offense.² In a bifurcated proceeding, defendant admitted that he had suffered one prior prison term (§ 667.5, subd. (b)), one prior serious felony conviction (§ 667, subd. (a)) for attempted murder, and two prior strike convictions (§§ 667, subds. (c) & (e)(2)(A), 1170.12, subd. (c)(2)(a)) for attempted murder and kidnapping.

Subsequently, defendant withdrew his admission to the prior serious felony conviction, and the trial court granted the People's motion to dismiss that allegation. The trial court denied defendant's motion for new trial, as well as his motion to strike one or both of his prior strike convictions and his motion to reduce the vandalism conviction to a misdemeanor. Defendant was sentenced to a determinate term of one year, and an indeterminate term of 25 years to life in state prison with 1,622 days of credit for time served. Defendant appeals from the judgment. Based on our independent review of the record, we find no error and affirm the judgment.

¹ All future statutory references are to the Penal Code unless otherwise stated.

² The burglary offense was later dismissed in the interest of justice.

II

FACTUAL AND PROCEDURAL BACKGROUND

In November 2014, S.D. began a romantic relationship with defendant, whom she had met six years earlier. After the relationship began, defendant frequently stayed at S.D.'s house in Moreno Valley.³ In June 2015, the relationship began to become violent, with defendant physically abusing S.D. on numerous occasions.

S.D. eventually had enough of defendant's physical abuse, and on August 20, 2015, S.D. told defendant that she could not deal with it and that he had to move out of her home. Defendant responded by becoming enraged, yelling, calling her names, taking her phone and car keys, and blocking the door so she could not leave the house.

Defendant later drove S.D. to work in her own vehicle. When she got inside her place of employment, S.D. called the police and reported defendant had taken her car. The police used the GPS system in the car to locate it, and S.D. had it towed home because defendant had taken her keys. When she got home, defendant was at her house so she called the police. Police officers cordoned off the house while an arrest warrant was obtained. The following day, officers went inside S.D.'s home, breaking down the front door and arresting defendant. The bathroom door was also kicked in and damaged. In

³ S.D. met defendant while she was employed as a civilian clinical psychologist with the California Department of Corrections and Rehabilitation (CDCR) in Sacramento State Prison. Against CDCR rules, S.D. began a romantic relationship with defendant while he was incarcerated. S.D. subsequently resigned from her position at CDCR.

addition, defendant had damaged S.D.'s cell phone. S.D. subsequently obtained a restraining order against defendant.

On the morning of September 21, 2015, S.D. went out for a couple of hours. When she returned home, she opened the garage door and saw defendant's car in her garage. She left her residence, and called defendant's mother, hoping she could persuade him to leave. She also texted defendant and told him to get out of her house. Defendant refused to leave. As a result, S.D. went to a neighbor's house where she spent the night. Sometime during the night, defendant left S.D.'s house. When S.D. returned home, she noticed that several of her possessions were missing but she was later able to retrieve them from defendant's car.

On November 7, 2015, T.E., a man with whom S.D. was developing a relationship, moved his possessions into her house. S.D. and T.E. left the house to run some errands at around 7:30 a.m., and returned at around 10:30 a.m. When they returned, the overhead garage door would not open all the way so S.D. went into the house through the front door. When S.D. stepped inside, she saw defendant inside the house, coming towards her. Once S.D. was in the residence, defendant shut and locked the door. Defendant was angry and called S.D. derogatory names.

S.D. looked around and noticed that "[t]he house was destroyed," and there was "stuff everywhere." T.E.'s clothes had been removed from suitcases and were in a pile downstairs. Lotion, nail polish, and kitty litter had been poured over the clothes. In addition, there was a burned spot on the floor where defendant burned a card that T.E.

had made for S.D. A window screen on a back window was broken, and many of T.E.'s possessions had been taken from S.D.'s home. These included a laptop, jewelry, Gucci sunglasses, a bone-stimulator machine, a bulletproof vest, and a variety of personal documents. T.E. estimated the value of his stolen items at around \$10,000. T.E. estimated the value of his damaged clothes at \$10,000 to \$15,000. T.E.'s 2007 custom show motorcycle, which he kept in S.D.'s garage, was also damaged. It cost T.E. \$1,865.59 to have the damage repaired, not including the cost of repainting the motorcycle.

S.D. attempted to deescalate the situation. After approximately an hour and a half, the police arrived at the residence and attempted to get defendant and S.D. out of the home. Around an hour later, defendant and S.D. exited the residence, and officers took defendant into custody. A couple of days later, S.D. noticed that several of her possessions were missing.

Following a preliminary hearing, on March 17, 2016, an information was filed charging defendant with burglary (§ 459; count 1) and felony vandalism (§ 594, subd. (b)(1); count 2). The information also alleged that defendant had suffered one prior prison term (§ 667.5, subd. (b)), one prior serious felony conviction (§ 667, subd. (a)), to wit, attempted murder in August 2005, and two prior strike convictions (§§ 667, subds. (c) & (e)(2)(A), 1170.12, subd. (c)(2)(a)), to wit, attempted murder and kidnapping in August 2005.

On September 1, 2017, a jury found defendant guilty of vandalism but deadlocked on the burglary charge. The trial court accepted the verdict on the vandalism charge and declared a mistrial on the burglary offense.

Defendant waived a jury trial on the prior conviction allegations. On May 25, 2018, defendant admitted that he had suffered one prior prison term (§ 667.5, subd. (b)), one prior serious felony conviction (§ 667, subd. (a)), and two prior strike convictions (§§ 667, subds. (c) & (e)(2)(A), 1170.12, subd. (c)(2)(a)).

On April 20, 2018, defendant filed a motion for new trial, arguing the trial court erred in denying his motion for a mistrial under *Batson/Wheeler*⁴ and admitting evidence of uncharged prior bad acts. On this same date, defendant also filed a motion to strike one or both of his prior strike convictions with supporting exhibits pursuant to section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. In the alternative, defendant requested that his vandalism offense be reduced to a misdemeanor.

On May 24, 2018, the People filed an opposition to defendant's motion to strike his prior strike convictions and to reduce his vandalism conviction to a misdemeanor.

On May 29, 2018, the People filed their opposition to defendant's motion for new trial.

The trial court heard defendant's motions on June 15, 2018. Following argument, the court denied defendant's motion for new trial. The court also denied defendant's

⁴ *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*); *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*).

motion to reduce the vandalism offense to a misdemeanor and defendant's motion to strike one or both of his prior strike convictions. The court thereafter proceeded to sentencing, and sentenced defendant to an indeterminate term of 25 years to life for the vandalism offense, plus a determinate term of five years for the prior serious felony conviction. The court stayed the one-year term for the prior prison term enhancement allegation. Defendant was awarded 1,622 days of credit for time served. Count 1 was dismissed on the People's motion.

On June 18, 2018, defendant withdrew his admission to the prior serious felony conviction under section 667, subdivision (a). The trial court thereafter vacated the sentence imposed under that section and granted the People's motion to dismiss the prior serious felony conviction allegation. The court then imposed a consecutive term of one year for the prior prison term allegation. The sentence for the vandalism offense was not amended. Defendant was sentenced to a total indeterminate term of 25 years to life on the vandalism charge, plus a determinate one-year term for the prior prison term allegation, with 1,622 days of credit for time served.

On June 29, 2018, defendant filed a timely notice of appeal.

III

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of

the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders v. California, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON

J.

We concur:

MILLER

Acting P. J.

SLOUGH

J.